

Message Text

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FM AMEMBASSY BONN

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INFO AMEMBASSY LONDON

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AMEMBASSY PARIS

USMISSION NATO BRUSSELS

USMISSION BERLIN

USMISSION GENEVA

C O N F I D E N T I A L SECTION 01 OF 04 BONN 09467

DEPARTMENT PASS TO SECRETARY

GENEVA FOR CSCE DEL

E.O. 11652: GDS

TAGS: PINT, US, UK, UR, FR, GW, WB

SUBJECT: CSCE AND GERMAN QUESTIONS: BONN GROUP STUDY

REF: BONN 9371

1. FOLLOWING IS THE DRAFT TEXT OF A BONN GROUP STUDY
ON CSCE AND GERMANY AND BERLIN-RELATED QUESTIONS WORKED
OUT IN THE COURSE OF THIS WEEK AND COMPLETED LATE JUNE

13. IT IS ENVISAGED THAT THIS PAPER WILL BE THE BASIS
FOR THE SENIOR LEVEL DISCUSSION OF THIS TOPIC IN OTTAWA
JUNE 18. ALSO TRANSMITTED FOR DEPARTMENT'S CONSIDERA-
TION IS A QUADRIPARTITELY AGREED DRAFT PAPER FOR POS-
SIBLE APPROVAL BY MINISTERS AT THE QUADRIPARTITE DINNER
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IN OTTAWA. THIS LATTER PAPER MAY, OF COURSE, BE AMENDED

IN LIGHT OF COMMENTS FROM CAPITALS OR AS A RESULT OF THE
SENIOR LEVEL DELIBERATIONS. BEGIN TEXT:

CSCE: GERMAN QUESTIONS BONN GROUP STUDY

A. THE QUADRIPARTITE GROUP, IN THE COURSE OF AN EXCHANGE
OF VIEWS ON THE CONFERENCE ON SECURITY AND COOPERATION IN
EUROPE INASMUCH AS IT AFFECTS THE GERMAN QUESTION, PRO-
CEED FROM THE FOLLOWING ASSUMPTIONS:

ALTHOUGH GERMANY AND BERLIN ARE NOT THEMES OF
THE CONFERENCE, ITS OUTCOME MAY HAVE A SERIOUS
BEARING ON GERMAN QUESTIONS IF CERTAIN PRE-
CAUTIONS ARE NOT TAKEN IN THE DISCUSSION IN
GENEVA.

DURING THE LAST YEARS, IN THE COURSE OF
"OSTPOLITIK", THE THREE POWERS AND THE
FEDERAL REPUBLIC SUCCEEDED, IN A COMMON
EFFORT, IN NEGOTIATIONS INVOLVING THE
SOVIET UNION AND THE GDR, TO KEEP OPEN THE
GERMAN QUESTION AND NOT TO PREJUDICE QRR,
MAINLY BY REFERENCES TO THE GERMAN NATION
AND BY THE QA ON BERLIN AND THE QUADRIPARTITE
DECLARATION.

NOW, THE FOUR POWERS AND THE TWO STATES IN
GERMANY, FOR THE FIRST TIME ON AN EQUAL
FOOTING, TAKE PART WITH OTHERS IN THE
WRITING OF PRINCIPLES CONCERNING THEIR
RELATIONS.

THE FOUR GOVERNMENTS HAVE ALWAYS PROCEEDED
FROM THE ASSUMPTION THAT THE RELEVANT TEXT
SHOULD HAVE NO BINDING LEGAL FORCE AND THAT
IT CANNOT AFFECT THE LEGAL RELATIONSHIP OF
THE FOUR AND THE TWO WITH REGARD TO GERMANY
AND BERLIN.

IT CANNOT BE DENIED, HOWEVER, THAT THE
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SAME TEXT WILL INEVITABLY HAVE, WHATEVER
ITS FORM AND ADOPTION PROCEDURE WILL BE,
A CONSIDERABLE POLITICAL WEIGHT. AT ANY
RATE, IT WILL BE CONSIDERED, BY THE USSR
AND ITS ALLIES AT LEAST, AS AN IMPORTANT
DOCUMENT PROVIDING THE BASIS OF THE EUROPEAN
ORDER, AND ESPECIALLY OF THE ORDER IN
GERMANY. AS SUCH, IT WILL CERTAINLY BE USED

BY THE SAME POWERS, MOST PROBABLY WITH A
VIEW TO OPPOSE AND CONTEST ELEMENTS OF THE
PRESENT SITUATION IN GERMANY WHICH ARE IN
FAVOUR OF THE THREE ALLIES AND THE FEDERAL
REPUBLIC.

BECAUSE OF THE VERY SUBJECT MATTER OF SOME
OF THE PRINCIPLES, FOR INSTANCE THE PRINCIPLE

NOTE BY OC/T: NOT PASSED TO SECRETARY.

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C O N F I D E N T I A L SECTION 02 OF 04 BONN 09467

OF THE INVIOABILITY OF FRONTIERS AND
THOSE OF SOVEREIGN EQUALITY OF STATES
AND OF TERRITORIAL INTEGRITY THE USSR
AND ITS ALLIES COULD BE TEMPTED TO CLAIM
THAT THE GERMAN BORDERS HAVE BEEN DE-

FINITELY SETTLED AND TO CONTEST THESE
RIGHTS AND RESPONSIBILITIES OF THE THREE,
WHICH WERE REAFFIRMED BY THE QA AND BY
THE QD.

ON THE BASIS OF THE ABOVE IT IS CONSIDERED THAT IT IS IN
THE COMMON INTEREST OF THE FOUR GOVERNMENTS THAT PARTI-
CULAR PRECAUTIONS SHOULD BE TAKEN IN THE FIELDS OF THE
PEACEFUL CHANGE OF FRONTIERS AND QUADRIPARTITE RIGHTS
AND RESPONSIBILITIES.

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. THE QUADRIPARTITE GROUP
ACCORDINGLY DRAWS ATTENTION TO THE ATTACHED DRAFT PARTS,
B AND C, AND RECOMMENDS THAT THEY BE REMITTED FOR COM-
MENTS TO THE 4 DELEGATIONS IN GENEVA. THE PAPERS COULD
THEREAFTER BE PUT INTO FINAL FORM, IN ORDER TO
PROVIDE THE BASIS FOR A COMMON LINE TO BE TAKEN BY THE
4 ON THESE SUBJECTS IN GENEVA.

B. PEACEFUL CHANGE OF FRONTIERS

1. THE TEXTS, PROVISIONALLY REGISTERED IN GENEVA IN THE
FIRST READING AT THE COMMITTEE STAGE, FOR THE PRINCIPLES
OF SOVEREIGN EQUALITY, REFRAINING FROM THE THREAT OR USE
OF FORCE, INVIOABILITY OF FRONTIERS AND TERRITORIAL IN-
TEGRITY STILL NEED TO BE SUPPLEMENTED BY A CLEAR STATE-
MENT ON THE CONTINUING ADMISSIBILITY OF PEACEFUL CHANGES
OF FRONTIERS.

THE CONFIRMATION OF THIS ADMISSIBILITY IS INDISPENSABLE
IN ORDER TO KEEP OPEN BEYOND ALL DOUBT THE PROSPECT OF
REALISING THE OPTION OF GERMAN UNITY AND IN ORDER TO
PRESERVE UNAMBIGUOUSLY THE CORRESPONDING LEGAL POSITIONS
OF THE FRG AND THE THREE POWERS (IE ORIGINAL RIGHTS
TOGETHER WITH ARTICLE 7 OF THE BONN/PARIS CONVENTIONS).

2. A. THE TEXT ON THE PEACEFUL CHANGE OF FRONTIERS
PROVISIONALLY REGISTERED WITH RESERVATIONS ON 5 APRIL
IN GENEVA RUNS AS FOLLOWS:

THE PARTICIPATING STATES CONSIDER THAT
THEIR FRONTIERS CAN BE CHANGED ONLY IN
ACCORDANCE WITH INTERNATIONAL LAW THROUGH
PEACEFUL MEANS AND BY AGREEMENT."

IT IS ACCEPTED BY THE PARTICIPATING STATES THAT AGREE-
MENT IS STILL OUTSTANDING ON THE PLACING OF THIS STATE-

MENT IN THE DECLARATION OF PRINCIPLES. FURTHERMORE THE FRG DELEGATION HAS ENTERED A RESERVATION THAT ITS FINAL FORMULATION MUST DEPEND ON WHERE IT IS PLACED.

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B. THE FORMULA QUOTED IN INSUFFICIENT. THE REFERENCE TO THE CONFORMITY WITH INTERNATIONAL LAW CREATES THE IMPRESSION THAT THE ADMISSIBILITY OF PEACEFUL CHANGE OF FRONTIERS IS NOT AN INHERENT CONSEQUENCE OF INTERNATIONAL LAW BUT IS SUBJECT TO ADDITIONAL SPECIFIC CONDITIONS BESIDES THOSE CONCERNING PEACEFUL MEANS AND AGREEMENT. ACCORDING TO THE SOVIET INTERPRETATION OF THE INVIOABILITY OF FRONTIERS AND OF TERRITORIAL INTEGRITY THIS COULD THEN AMOUNT TO THE EXCLUSION OF A CHANGE OF FRONTIERS IN GERMANY THROUGH PEACEFUL MEANS AND BY AGREEMENT IN REALISATION OF THE OPTION OF GERMAN UNITY. THE MINIMUM THEREFORE THAT MUST BE ASSURED IS THAT THE REFERENCE TO INTERNATIONAL LAW SHOULD APPEAR IN THE SENTENCE IN A MANNER WHICH AVOIDS THAT RISK.

3. WITH REGARD TO THE TREATMENT OF THE NECESSARY FORMULA, THE FOLLOWING CONSIDERATIONS APPLY:

A. THE INSERTION IN THE PRINCIPLE ON THE INVIOABILITY OF FRONTIERS, WHICH IS REGARDED BY THE WESTERN SIDE AS THE LOGICAL SOLUTION, SHOULD CONTINUE TO BE CONSIDERED AS THE POINT OF DEPARTURE FOR THE EFFORTS TO OBTAIN THE NECESSARY CONFIRMATION ELSEWHERE. SINCE, HOWEVER, SUCH A SOLUTION IS UNATTAINABLE ON ACCOUNT OF THE DETERMINED OPPOSITION OF THE SOVIET UNION, WHICH HAS ALREADY BECOME EVIDENT, IN

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C O N F I D E N T I A L SECTION 03 OF 04 BONN 09467

THE INTERESTS OF ACHIEVING A SATISFACTORY SOLUTION AT
ALL IT SHOULD NOT BE PURSUED IN SUBSTANCE.

B. EFFORTS TO SOLVE THE PROBLEM IN ANOTHER WAY
SHOULD NOT CONCENTRATE ON INSERTING THE FORMULA IN
THE PRINCIPLE OF SOVEREIGN EQUALITY. IN THIS POSI-
TION A FAR-REACHING REFORMULATION WOULD BE NECESSARY.
NOT ONLY WOULD IT HAVE TO BE ESTABLISHED THAT PEACE-
FUL CHANGES OF FRONTIERS ARE ADMISSIBLE ACCORDING TO
INTERNATIONAL LAW AS A NATURAL CONSEQUENCE OF SOVER-
EIGNTY, BUT ALSO THAT THIS ADMISSIBILITY IS NOT
LIMITED BY THE SUBSEQUENT PRINCIPLES, (IN PARTICULAR
INVOLABILITY OF FRONTIERS AND TERRITORIAL INTEGRITY).
AN APPROPRIATE FORMULATION HAS BEEN COMMUNICATED BY
THE FRG DELEGATION IN GENEVA TO DELEGATIONS OF THE
NINE AND OF THE UNITED STATES.

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THE SOVIET UNION HAS INDICATED A CERTAIN READINESS TO
ACCEPT A GENERAL FORMULA ON THE PEACEFUL CHANGE OF
FRONTIERS IN THE PRINCIPLE OF SOVEREIGN EQUALITY.
HOWEVER THEY ARE HOSTILE TO THE REFORMULATION,
ESSENTIAL TO US. IF WE INSIST ON THE INSERTION OF
THE FORMULA IN THE PRINCIPLE OF SOVEREIGN EQUALITY
WE RUN THE DANGER THAT IN THE LAST RESORT UNDER THE
SPECIAL CONDITIONS OF THE CONFERENCE WE WILL ONLY
SUCCEED IN ATTAINING A STRIPPED-DOWN FORMULATION,

UNSATISFACTORY TO US.

C. EFFORTS SHOULD RATHER BE CONCENTRATED ON PLACING THE FORMULA IN THE PRINCIPLE ON TERRITORIAL INTEGRITY. IN THAT CASE IT WOULD BE ESSENTIAL FOR THE FORMULA TO APPEAR AS AN INDEPENDENT CONCLUDING PARAGRAPH WITHIN THIS PRINCIPLE.

THIS SOLUTION WOULD INDEED BE LESS UNAMBIGUOUS THAN THE INSERTION IN THE PRINCIPLE OF SOVEREIGN EQUALITY OF A SENTENCE SIGNIFICANTLY REFORMULATED IN THE SENSE REFERRED TO ABOVE. NONETHELESS IT WOULD STILL TAKE ACCOUNT OF OUR INTERESTS, BECAUSE IN THIS WAY THE CONCRETE TERRITORIAL FORMULAE IN THE DECLARATION OF PRINCIPLES WOULD CONCLUDE WITH THE AFFIRMATION ON THE ADMISSIBILITY OF PEACEFUL CHANGES OF FRONTIERS.

THE ADVANTAGE OF THIS SOLUTION IS THAT ONLY A RELATIVELY MINOR REFORMULATION IN THE SENSE DESCRIBED IN PARAGRAPH 2(B) ABOVE WOULD BE NECESSARY. IT WOULD HOWEVER BE INDISPENSABLE. IF DURING THE DISCUSSION OF THIS SOLUTION THE SOVIET SIDE WERE TO SHOW A PREFERENCE FOR PLACING THE FORMULA ON THE PEACEFUL CHANGE OF FRONTIERS IN THE PRINCIPLE ON SOVEREIGN EQUALITY IT WOULD HAVE TO BE MADE CLEAR TO THEM THAT THIS MIGHT CERTAINLY BE POSSIBLE FOR THE WESTERN SIDE BUT ONLY UNDER THE ESSENTIAL PRECONDITION OF A CLEAR FORMULATION IN THE BROAD SENSE MENTIONED ABOVE.

4. OTHER THEORETICAL SOLUTIONS APPEAR EITHER LESS SATISFACTORY OR LESS FEASIBLE:

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FACTORY OR LESS FEASIBLE:

- THE INSERTION OF A FORMULA AS A SEPARATE PRINCIPLE
- THE PLACING OF SUCH A FORMULA IN THE PRINCIPLE OF THE RIGHT OF SELF-DETERMINATION
- THE PLACING OF THE FORMULA AS AN INTERPRETATIVE CLAUSE WITHIN THE SO-CALLED DISPOSITIVE PROVISIONS OF THE DECLARATION.

5. THE FORMULA SHOULD BE DISCUSSED AND REGISTERED AS SOON AS POSSIBLE AND IN ANY CASE BEFORE THE BEGINNING OF THE SECOND READING.

C. PROTECTION OF QUADRIPARTITE RIGHTS AND RESPONSIBILITIES

THE PROTECTION OF THE QUADRIpartite AGREEMENT AND OF THE QUADRIpartite DECLARATION, AND, MORE GENERALLY, OF QUADRIpartite RIGHTS AND RESPONSIBILITIES, CAN, A PRIORI, BE ASSURED IN TWO WAYS.

ONE WAY IS TO EXCLUDE, IN THE CLEAREST POSSIBLE FASHION BY AN APPROPRIATE PASSAGE IN THE LIST OF PRINCIPLES, ANY EFFECT THESE PRINCIPLES MIGHT (OTHERWISE) HAVE IN DETRACTING FROM THESE AGREEMENTS OR RIGHTS AND RESPONSIBILITIES. SUCH A SOLUTION HAS NUMEROUS ADVANTAGES. IT

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WILL, INTER ALIA, BIND EQUALLY THE FOUR POWERS AND THE TWO STATES IN GERMANY AND IT WILL BE FULLY USABLE AGAINST THE SOVIET UNION AND ITS ALLIES IN THE EVENT OF LATER CONTESTATION (I.E., OF THE AGREEMENTS OR OF THE

RIGHTS AND RESPONSIBILITIES OF THE THREE POWERS).

THE NATURAL PLACE TO INSERT A PROVISION OF THIS KIND IS IN PRINCIPLE NO. 10, WHICH HAS NOT YET BEEN OFFICIALLY DISCUSSED IN THE FRAMEWORK OF CSCE.

IN CONFORMITY WITH THE RECOMMENDATIONS OF HELSINKI, THIS PRINCIPLE CONCERNS THE "CARRYING OUT IN GOOD FAITH OF UNDERTAKINGS MADE IN ACCORDANCE WITH INTERNATIONAL LAW." A SIMPLE REFURBISHING OF THIS FORMULA, WITHOUT A COMPLEMENTARY STATEMENT MAKING IT MORE PRECISE, WOULD PUT US IN THE POSITION OF HAVING ACCEPTED THE CARRYING
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OUT OF BILATERAL AND MULTILATERAL AGREEMENTS SIGNED BY THE PARTICIPATING STATES -- INCLUDING THOSE BINDING THE USSR AND ITS ALLIES. HOWEVER, IT WOULD NOT PROVIDE US WITH THE ASSURANCE THAT THE SAME WOULD HOLD TRUE WITH RESPECT TO TEXTS CONCERNING BERLIN AND GERMANY WHERE THE RIGHTS AND OBLIGATIONS DO NOT ALWAYS DEPEND ON A SIGNATURE IN PROPER AND DUE FORM, AND IN SOME CASES ARE NOT EVEN BASED ON A DOCUMENT BUT ON ORIGINAL RIGHTS.

THUS IT IS IMPORTANT THAT WE DEVELOP THIS FORMULA. MOREOVER, IT IS PERMITTED BY THE RECOMMENDATIONS OF HELSINKI. WE SHOULD STATE MORE PRECISELY, ALONG THE LINES OF A FRENCH DRAFT, THAT THE DECLARATION "CANNOT AND WILL NOT AFFECT EITHER THE RIGHTS HELD BY THE PARTICIPATING STATES OR THE TREATIES, AGREEMENTS, AND ARRANGEMENTS OF A BILATERAL OR MULTILATERAL CHARACTER PREVIOUSLY SUBSCRIBED TO BY THEM (OPEN GERMAN BRACKETS, OR WHICH AFFECT THEM CLOSE GERMAN BRACKETS)." THIS FORMULATION WOULD PROVIDE THE BEST GUARANTEE TO THE THREE AND THE FRG IN THE SENSE THAT IT COVERS ALL OF THE ARRANGEMENTS REACHED BY THEM IN RECENT YEARS, AND THOSE OF 1952-54, THAT IS TO SAY, THE OLD FOUNDATION OF QUADRIPARTITISM.

ANOTHER WAY WOULD BE THAT OF A DISCLAIMER, DEPOSITED IN WRITTEN FORM AS ONE OF THE DOCUMENTS OF THE CONFERENCE AND STIPULATING THAT QUADRIPARTITE RIGHTS AND RESPONSIBILITIES ARE NOT AFFECTED. TWO DISCLAIMERS HAVE ALREADY BEEN MADE BY THE THREE AND THE FRG: THE FIRST, IN WRITTEN FORM, IN RESPONSE TO THE FINNISH INVITATION IN THE AUTUMN OF 1972, THE SECOND ORALLY AT THE BEGINNING OF THE WORK OF THE COMMITTEE PHASE IN GENEVA. A REPE- TITION OF THIS EXERCISE BY THE SAME POWERS WOULD IN ANY EVENT PRESENT CERTAIN DISADVANTAGES. THE MOST IMPORTANT OF THESE IS THAT THE SILENCE OF THE USSR AND GDR WOULD RISK AFFECTING THE FUTURE VALIDITY OF THE UNDERTAKINGS ACCEPTED BY THOSE TWO STATES IN THE BERLIN AGREEMENT AND

THE QUADRIpartite DECLARATION. FINALLY, SUCH A DISCLAIMER COULD NOT BE USED AS EFFECTIVELY AS COULD A PRECISE STATEMENT INCLUDED IN THE PRINCIPLES THEMSELVES AGAINST EFFORTS OF THE EASTERN COUNTRIES, EVEN IF THESE EFFORTS WERE ONLY MADE WITH RESPECT TO THIRD COUNTRIES, CONFIDENTIAL

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TO PUT ACROSS THEIR CONCEPTION OF THE RESULTS OF CSCE.

IT WOULD APPEAR TO BE VIRTUALLY IMPOSSIBLE TO OBTAIN A DISCLAIMER EMANATING FROM THE FOUR.

(OPEN BRITISH BRACKET. IN CONCLUSION, THE BONN GROUP CONSIDERS THAT IT IS IMPORTANT TO SEEK AND OBTAIN AT GENEVA A SATISFACTORY VERSION OF THE TENTH PRINCIPLE. RECOURSE TO A DISCLAIMER IS, AT BEST, A FALL BACK SOLUTION. CLOSE BRITISH BRACKET). THE DRAFTING OF A DISCLAIMER SHOULD BE EXAMINED BY THE BONN GROUP. END TEXT. HILLENBRAND

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, BERLIN QUADRIpartite MATTERS, MEETING DELEGATIONS, SOCIAL RECEPTIONS, RECOGNIZED BOUNDARIES, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 14 JUN 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974BONN09467
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740154-0935
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740646/aaaabmym.tel
Line Count: 517
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 10
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: BONN 9371
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 03 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <03 APR 2002 by izenbei0>; APPROVED <17 JUN 2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CSCE AND GERMAN QUESTIONS: BONN GROUP STUDY
TAGS: PINT, US, UK, UR, FR, GE, WB, CSCE, NATO
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005